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Main works-

A saga of Sacrifices: Praja Parishad Movement in J&K

100 Documents: A reference book J&K, Mission Accomplished

A Compendium of Icons of Jammu & Kashmir & our Inspiration (English)

Jammu Kashmir ki Sangarsh Gatha (Hindi)

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JOURNAL SECTION

EVOLUTION OF JUDICIAL SYSTEM IN JAMMU & KASHMIR STATE

(From 1846 to 1947)

By Vidya Bhushan*

As the legal system and administration of justice reflect, to large extent, the social development of the people-their institutional life, traditions and norms of behaviour, it is neither, therefore, possible nor always desirable to impose on an underdeveloped and traditional society a system based on modern values and attitudes.

The first Dogra ruler, Maharaja Gulab Singh, whom the biographers of Lawrence called the "ULYSSES OF HILLS"[1] and whom Panikar regarded as "ONE OF THE REMARKABLE MEN THAT INDIA PRODUCED IN 19TH CENTURY",[2] was not a reformer but a founder and "the present Jammu and Kashmir State is his monument".[3] He had received an autocratic legacy from the Sikhs, who in their turn had received the same from Pathan rule which they ended in Kashmir. The apparatus of justice, therefore, remained unorganised, arbitrary and mediaval in the first thirty years of Dogra rule. However, the courts of appeal at Jammu and Kashmir, in one form or the other, and below them a number of other courts, have been existing since the earlier days of the Dogras. But the judicial system was nothing but a blend of inefficiency and nepotism. Anyhow, the evolution of the judiciary in the state can briefly be discussed under the following phases:-

a) The rule of one man in whom vested all the judicial powers;

b) Establishment of Adalat-I-Alia High Court);

c) Organisation of a High Court with one Judge;

d) Establishment of a High Court of Judicature;

e) Establishment of His Highness 'Board of Judicial Advisers;

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f) Granting of letters patent to High Court; and

g) Judicial system as envisaged in New Kashmir.

1. 1 The Rule of One Man in Whom Vested All The Judicial Powers

The Maharaja Gulab Singh was a founder rather than a reformer. He had hardly any time left for setting up an administration. So for as the administeration of justice was concerned there were no special Courts, nor any code of procedure for guidance 1"To administer justice was the duty of no one, yet every one, who held any responsible post throughout the State, was responsible to administer it both in the civil and criminal cases".[2] Apart from common sense, there were for guidance the Hindu and Mohammedan Laws and the orders of the Maharaja, which might be termed as the law of equity.[3] The Kardar, who used to realize land revenue, and the Kotwals, whose duties were to supress crimes ,served as the original or the lowest Court within their respective jurisdiction. The Maharaja himself was the highest Court of appeal.[1] The Maharaja could readily deal with the petitions represented at any time or place. Only the petition had to be accompanied by a "Nazar" (gift) of one rupee.[1]

It was a rule of one man in whom vested all the judicial powers. "His justice was rude, but it was expeditious". He was relentless in his punishment and his summary methods made him a terror.[2]

1.2 Establishment of Adalat-i- Alia (High court)

Before Maharaja Ranbir Singh, all the earlier rulers of the state had made a point merely to exploit the State, rather than introduce even a modicum of administrative reforms either civil or judicial. There were neither laws nor law courts.

Maharaja Ranbir Singh gave a new touch to the Judiciary and established regular Courts of justice with defined powers. "Chakladars" were appointed at every police station to dispose of petty civil and criminal cases.[4] In 1873, a mixed Court composed of a British Officer and a civil judge, belonging to the State, was established to decide suits between Europeans and their servants, on the one hand and the subjects of the Maharaja on the other.[1] To place the administration of justice on sound footing an Adalat-i-Alia (High Court) was established in 1877 and its powers were also defined as:-

> "The High Court (Adalat-i-Alia) shall be deemed for the purposes of all enactments for the time being in force to be the highest court of appeal or

revision, subject to the control and the judicial powers exercised by His Highness the Maharaja Sahib Bahadur. The general superintendence and control over all other civil courts shall be vested in, and all courts shall be subordinate to the High Court".[2]

By 1885 an Adalat Sadar (Chief Court) was created at Jammu and another at Srinagar[3]. "The judges of the Sadar adalats were subordinate to the governors of their respective provinces, whose advice was sought while deciding important cases."[4] The State civil procedure code,[5] a criminal code[6], a penal code of 100 sections in Dogra and then a new penal Code SRI RANBIR DANDBIDHI wene compiled and introduced.[7]

In all cases of imprisonment for more than five years a direct order from the Maharaja was required. In capital cases the Maharaja was aided by Jury. Justice was inexpensive and it required only half a rupee worth stamp to be heard by the Maharaja. [1] Sometimes even petty cases went before the Maharaja and it was open to the parties to present their cases directly instead of approaching the inferior Courts first. [2] There were in all 25 Courts in the State of which 14 were Wazarat Courts. [3] Inspite of this improvement all the judicial powers, like the executive and legislative powers, still remained vested in the Ruler.

1.3 Organisation of a High Court with one Judge.

The judicial system was thoroughly reorganised during the reign of Maharaja Partap Singh. [5] The laws of the State were modernised and codified. [6] The mixed Court established in 1873 was abolished and the Resident and his Assistants were invested with powers to dispose of civil suits in which both parties were British Subjects or the defendant was a British Subject or an Indian Subject to His Majesty. [7] The civil procedure code of 1873 was not a complete code. Maharaja Partap Singh desired to improve it and he was able to do so in 1896 through the Council of Ministers. A High Court consisting of one Judge, who was also a Judicial Minister, was organised in 1897. Appeals from it were laid before His Highness in Council.[8]

1.4 The Establiment of a High Court of Judicature

Judicial circular No. 201, passed under Regulation No.39 dated January, 1896 authorised the adoption of many important British Indian Acts, in so far as their contents were not repugnant to any law or practice established in the State.[9] In 1913, the British Indian code of criminal procedure (Act V of 1898) with certain modifications was introduced.[10] " To make justice more accessible to the people the number of

courts was increased in 1889 and 1904. A Munsiff and a Sub-Judge were appointed in every Tehsil and District respectively".[5]

H.H. Maharaja Hari Singh's Government also took a special care to see that the adminsitration of justice was cheap, expeditious and pure.[6] The State Judiciary was then modelled on the system prevalent in the British Provinces and justice was administered by Courts regularly graded as in British India, culminating in a High court. A High Court of judicature, with considerably enlarged powers on the lines of the High Courts in British Indian Provinces. was constituted by Order No.1 of 26th March, 1928. It was one of the most important events of that time.[7] The High Court of Judicatur had a Chief Justice and two Puisne Judges.[8] In matters of appointments, salary and other emoluments of High Court Judges, the Maharajas decision was final.[9] The Maharaja exercised vast powers: so much so that the High Court could not grant leave or transfer subordinate judges and munsiffs except by his approval. With his consent the High Court could confer civil and criminal powers on subordinate judicial officers.[10] Even the reduction, suspension or dismissal of a judicial official was subject to his approval.[11] Likewise admission and enrolment of advocates, vakils and attorneys-at-law were also subject to the limits fixed by the Maharaja and their qualifications were also prescribed by him in consultation with the judges of the High Court.[12] In 1930, in view of the marked improvement in the Judicial administrations of the State, the jurisdiction exercised by the Residency Courts in certain categories of civil cases was ceded to the State Courts.[13] The jurisdiction of the High Court of judicature was then extended to Poonch and Chenani Jugirs.[14] The Regulation No. 1 of 1991 (1934 A.D.) stated the powers of Executive and Legislature but did not incorporate any provision about the Judiciary.

1 5 Establishment of His Highness' Board of Judicial Advisers

The next landmark in the development of judiciary in the state was reached by promulgation of Jammu and Kashmir Constitution Act of 1996 (1939 A.D.)[15] The Act brought the High Court in line with the corresponding tribunals of the British India. and, in organisation of the lower Courts, the State generally followed the precedents of British India. The Laws enforced in the State had also been, in most cases, adopted from those prevailing in the neighbouring British territory.[16] The Act provided for the establishment of a Board of Judicial Advisers to advise His Highness in regard to the disposal of Judicial cases going up to him. The Board was to consist of as many members as His Highness might appoint. The Maharaja was also empowered to nominate

any person as an ex-officio member of the Board to act for the Board when it was not in session, provided that such an ex-officio member was not to sit on any Bench of the Board in the deciding of appeals and other matters referred to for advice.[5] The Appeal to His Highness Act XVI of 1896 was then enacted to laydown the objective laws for filing appeals before the Board.[6] Board of Judicial Advisers procedure) Rules had also been made under Order No. 17-H of 1941.[7]

The Board was to discharge the same function with respect to the State as was performed by the Judicial Committee of the Privy Council with respect to the British India. That was why it was called a "Proto type of the Judicial Committee or the Privy Council of England". Jammu and Kashmir was the only State in India in which such a high tribunal was established to hear appeals against the decisions of the High Court.[2]

1.6 Letters Patent

The most important landmark in the evolution of Judiciary in the State was the granting of Letters Patent to the High Court on 28th August 1943[8]. It virtually separated the Judiciary from the Executive Control and placed it under the Maharaja.[4] The Prime Minister remained only a channel of communication between the Maharaja and the High Court. It gave to the Court a status and prestige of its own.

1.7 Judicial System as Envisaged in New Kashmir

The New Kashmir Manifesto provided for the High Court of the JK State as well as District and Tehsil people's Courts.[5] The High Court was to be the highest judicial tribunal and was charged with the supervision and direction of the judicial activity of all organs of the State.[6] The High Court was to be elected by the National Assembly for 5 years and the lower courts were to be appointed by the High Court for the same duration except that the people's court was to be elected by the people's panchayat for the same period. In all courts, cases were to be tried with the participation of the people's judges with the exception of cases specially provided for by law.[2] The proceedings in the High Court were to be conducted in the lingua franca of the State viz Urdu. But the proceedings in the lower courts were to be conducted in the local language. Persons who did not know the language of the Court would be supplied with an interpreter and would have a right to address the Court in their own language.[3] The accused would have a right of defence and cases were to be heard openly, except when otherwise provided for by law.[4] There were pro-

visions for the Advocate General and State Advocates in Districts and Tehsils[5]

FORCES AND FACTORS OF MODERNIZATION

Now, we may turn to a brief description of the forces and factors modernisation of judicial system as referred above.

The long arduous and evolutionary process of the development and transformation of the judicial system from promotive autocratic to a democratic system involved a number of factors. The most important of them are:-

1. One of the first influences in the direction of this modernisation was that of the British rule over the subcontinent. Towards the last quarter of the 19th century, the British interest in Kashmir and its standard of administration was stimulated and accelerated by Czarist Russia's expansionist policy in Central Asia and the state's strategically vital position, particularly in the frontier areas of Gilget. The British wanted to establish their residency in Kashmir and to pressurise the Ruler to grant lease of Gilget. The succession of Maharaj Partap Singh in succession to his father in 1885 gave them an opportunity for achieving their goal and for pressing administrative reform in the state. For various reasons they abstained from straight away taking over Kashmir. However, all this led to noticeable improvement and structuring of administrative machinery including judicial administration.

2. In the first decade of this century, two degree Colleges-one in Jammu and the other in Srinagar, were established for giving the western type of education as was then prevalent in British India. This was somewhat proceded and accompanied by similar move at the level of primary and secondary education. Within a generation, an educated elite, both in Kashmir valley and Jammu came into existence. A little later some of the young inhabitants from the state who went to the University in British India for their post graduate studies of law, return with law degrees. The state also later on started its own Munsiffship and Pleadership examinations. Success in these examinations required of knowledge of civil and criminal law as was essential for the B.L. examination of Indian University. All these charges influenced a lot in modernisation of the Judicial system on British Indian lines.

3. The growth and role of press particulary from British India greatly helped in disseminating the short coming of the primitive administration of justice in Kashmir. As a result number of reforms to modernise the judicial system on British pattern were introduced. The administration of the state judiciary was overhauld: Partial separation of judiciary from the executive took place: the state courts were authorised to try persons living in the state irrespective of their nationality: powers of the state High Court were enhanced and a Judicial Advisory Board was established.

In short arbitrary justice in Kashmir was gradully replaced by justice according to established laws and procedure.

Despite of all this, the judiciary was not at all free from the executive and the judges of Hight Court, who hold office at the pleasure of Maharaja, did not have security of tenure. These defects were eliminated only after independence.

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Legal Aspects of Compensation Claims

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The tern "compensation-claim" has not been defined any where. As is evindent from this phrase, it incorporates two main factors: firstly, there should be a claim and secondly, that claim should be for compensa tion. The third factor which ipso facto comes out of this phrase is, that there should be some act or omission on the part of wrong doer, which give rise to such a claim,

Here, a questian naturally arises? Can all claims, where compensation has been claimed, be termed "compensation-claims' The reply is "No". A "claim for compensa tion" and ',compensation-claims", vis-a-vis' Railways, are quite distinct with each other. For example, A claim by a Railway employee for payment of his arrears of salary, under Payment of wages Act, with prayer to count for 10 times compensation, does not fall into this category. Also, in case of a contractor, whose contract has been prematurely terminated, his suit for damages may be a claim of compensation but it is not covered by "compensation-claim".

In fact, in Railways the term "compensa- tion claim" is used in the restrictive sense and it relates only to those claims lodged with the Railway which are in respect of goods, placed in charge of Railways and which have been either not delivered, or lost deteriorated, destroyed or even delivered much late.

The next question, then arises: What is the necessity to consider "Legal aspects of compensation - claims"? One of the distinguishing features of democracy with any other form of Govt. is rule of law. In a democracy rule of law is supreme and none is above law, while in monarchy or dictator ship the world of ruler or dictator is supreme Since, we having a democratic set up, there- fore we have to synchronise our activities in confirmity with the provisions of the law in vogue.

Thus, the study of the legal aspects of compensation claims becomes all the more important.

Before we proceed further on our main topic, we may deal with two terms which have so long been held the basis for determining the liability or otherwise of Railways in respect of claims for compensa- tion. They are "negligence and misconduct Before amendment of Railways Act in 1961 (Act 39 of 1961), liability of Railways was that of a bailee i.e., Railways as a bailee had to act in respect of goods entrusted to them as "a man of ordinary prudence would have done under similar circumstances in respect of goods of same quality and value". Thus, in ordinary parlance, if the Railways were negligent to act as a man of ordinary prudence, they were held liable. Legally negligence has been described as "Gross

neligence" amounting to "doing of something which one ought not to have done". It is very near to "misconduct" which is held as "Intentional doing of something which one should not have done or vice versa".

Even after amendment of Railways Act, in 1961, Railways are still liable as bailee in certain cases-like Responsiblity of Railways after termination of Transit (Sec 772 RA) and to some extent under sections 74 & 75 Indian Railways Act. It should be clearly borne in mind that it is "omission & commission of which make the Railways liable; and Railways should not be misled by the nation that they are liable only for what they do.

These word "negligence and misconduct have an important bearing on "legal aspects of compensation claim" as entirely all law and rulings in respect of booking upto 1961 are based on decisions of those points only.

Now we proceedfurther to next question as to what constitutes compensation claims? These claims arise out of 'loss destruction, damage deterioration, non-delivery and delayed delivery of the consign ments. Exploring further we find that there are various reasons on account of which these contingencies occur' e g, destruction, deterioration. may be caused due to delay in transit, improper loading, negligence or, mis- handling of the goods or by natural cases. Loss may be caused due to theft, misappropriation, mis-delivery of the good. and non-delivery, or due to any of the above reasons for which 'loss' occurred or due to the fact that the goods are not traceable on account of misdespatch or any other reason.

The law as it exists now, after the amendment of Railway's Act in 1961 has introduced another term, besides 'neligence and misconduct" to determine the liability and non-liability of Railways. This term is "reasonable care and foresight". Again, this term has not been defined anywhere' so we have to consider them according to their ordinary dictionary meaning, which says that Railways are not liable in certain contingencies if they had taken reasonable care required of the goods and that they had at the same time apprehended the coming events. involving goods, and taken protections against them. However, it still depends on how the Courts interpret this phrase and any case, it depends on each individual case as to what type of "reasonable care and fore sight" was expected of.

Let us now consider provison of Rail way's Act in this regard. It is chapter VII which deals with the compensation claims. We can safely divide provisions of this chapter into 3 parts :

(a) Those which describe absolute liability of Railways.

(b) Those which describe absolute non-liability of Railways.

(c) Those where Railways may be liable of not, on happening or not of something

(A) Cases where Railways have been held absolutely liable irrespective of the fact whether it was liable or not are described under Sections 73 and 82-A.

Section 73 described the liability in general under which Railways are absolutely liable for any loss etc. sustained by the goods.

Similarly u/s 82-A, Railway is liable to injuries sustained by passengers in train-accident - but this subject is beyond the scope or our discussion here.

(B) Cases where Railway has been absolutely absolved from liability, are mentioned in Sections 74, 76-A, 76-B, 76-C, 77 (2), 77(3), 77(A) and 77(B). That is in case where no receipt has been given for Luggage deviation of route, wrong delivery or forged endorsement on original *R*/R, goods delivered at siding, goods remaining undelivered after 30 days of termination of transit, non-payment of insurance on goods or animals.

(C) Cases in between, can again be sub devided into two parts,—first, where party has to do something to make Railway liable and second, where Railway has to do something to make it non-liable. A bulk of them comprises mainly of those cases wherein either packing condition have not been complied with, or open wagons have been selected by the senders of goods are of perishable nature.

Railway as carriers have to provide maximum facility to the General public, and in the coatext of rail-road competition, have to, further maintain its "Good Will", among them. Hence, compensatition-claim are a thorn in the flesh of the Railways, because on the one hand they drain a substantial sum out of Railways Revenue every year, while on the other hand they adversely affect Railways, good-will among general public. Hence the Railways have to make every effort to eradicate them. And here lies the importance of "legal aspects" which should always serve as the guiding factors to Rail admimistration.

We now proceed step, and explore the possibilities which may be able to minimise loss.

Forwarding Note

First of all, the commercial transactions start with a small but very important document. It is known as forwarding note. I may emphasize, that for Railways vis-a-vis the parties, with whom Railway transacts business, this is very important document and perhaps ironically, it receives very insignificant attention.

Let us first consider the question: Do the Railways have to accept forwarding note in each and every case? The reply is: No? Section 72 IRA provides that forwarding notes are required only in the following cases:

(a) In all cases of goods booking; and
(b) In cases of other booking only when the commodities are

(i) booked at O. R. Rate;
(ii) of perishable nature;
(iii) Excepted Articles
(iv) defectively packed etc.
and (v) explosive and dangerous goods.

A forwarding not has entries on both sides. On the one side they are to be filled in by the sender or his agent and on the side by the Railway staff. That is why importance of this document increases enormously as it is a document which establi shes contract of carriage between sender and Railways embodyiug the terms and condition agreed upon between them, And that is why this document is very frequently referred to in disposal of the compensation claims, by the Railways as well as by the courts.

Every entry in the forwarding note has its own importance. The front side is filled in by the senders. It contains (a) names and address of the senders and consignees; (b) Discription of goods; (c) Weight; (d) freight to pay/paid and (e) special conditions taking them seriatim:

Names & Address of Parties:

Names and address of parties have their own importances as they are needed whenever Railway wants to contact the parties calling for instructions for disposal of goods, payments of its dues etc. Income plete address have resulted in non-service of notices u/s 55 and 59 IRA (usually known as sale notices) upon the parties and many times courts have declared sales as illegal as no notices were served. Thus, this entry has its own importance.

Description of Goods:

The most important entry come next. It is numder and description of goods have been properly described, the Railways cannot charge proper freight. The cases of misdeclaration, wrong-classification or re-classification arise on account of entries in this column. Many a times Railway Administration has been put to services losses in absence of proper description of goods. To quote an example, a forwarding note bore entry about several hundred bags "B. Nuts". At destination the party disowned the consignment saying that the bags contained Bahera-nuts while he booked Betal nuts and the Railway in that case had to spend enormous sums in litigation to establish falsity of claim. This could not have taken place had the Railway staff checked the entry then and there and asked the party to clearly describe the commodity. Another example, is describing the commodity as M. oil which may stand for 'Mahuwa oil' as well as for 'Mustard oil'. Hence not only abbreviations but in complete descriptions should be discouraged in describing the commodity by the parties.

Also proper description of goods is necessary to check misdeclaration and to claim percentage charges on excepted articles.

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Next comes the column for weight. This column is important in many ways and should not be lightly brushed aside. In many a case this column has been the deciding factor of compensation claims particularly in those cases where sender's weight was accepted and the goods were not weighed by the Railway staff.

Then comes the various entries embodying "special conditions". They relate to packing conditions, Rates, types of wagons and excepted articles.

Condition, Packing & Defect in Goods :

Regarding packing conditions, the Railways have to be most careful. The parties are naturally reluctant to incorporate them and it is the duty of Railways to properly and thoroughly inspect the goods and get the defective conditions or defective packing of goods properly laid down in the forwarding notes. The Railway had to loose many suits on the grounds that incomplete and inadequate conditions of goods were described in the forwarding notes and this could not be explained as to in what way the packing was defective or packing condition was not complied with. For examples, in case of sugar packing condition p/7 is applicable. An entry in the forwarding note as "P/7 not complied with" is totally inadequate and misleading. There should clear mention of the facts as to in what P/7 has not been complied with. Another example is of P/14 which is applicable in case of bales of Handloom Products etc. Here again it should be clearly mentioned as to which of the conditions laid down has not been complied with and simply mentioning "P/14 not complied with" is completely inadequate.

Same arguments apply to defective conditions of the goods. Specific defects must be got noted in the Forwarding Notes by the senders.

These arguments should best be understood in context of judicial decisions, The relevant section of Railways Act is 77-C. On a reading of this section it becomes abundantly clear, that the Railway is exonerated from liability in case of defective conditions of goods or defective packing only when the damage, leakage, waste or deterioration can be proved to have resulted as a direct consequence of the said defective condition or defective packing. That is what precisely has been held unanimously by the courts of this country. Hence specific and precise mention of the actual defect in goods or in their packing in Forwarding Note must be adhered to.

One more thing must also be mentioned in this respect. By Amendment of 1961, it has been incorporated in Railways Act vide Sec. 77-c,sub-Sec.(2)that the Railway can seek protection of defective condition of goods or of defective packing even if detected at destination, provided they were so at the

time of booking and they were not brought to the notice of the forwarding station staff But here, it must be clearly understood that it is the duty of Railways to see the goods before booking, hence they cannot normally seek protection of this section and thus though the goods may be in defective state or they may not have been packed as per rules, yet the Railways cannot escape liability, even in case of detection at destination if those conditions were not got incorporated in forwarding Note by the senders. The only cases wherein protection of this provision can be taken are only two — first case is, where loading and unloading is to be performed by the senders and consignees and Railway staff has not been able to supervise the loading; and secondly, in case of latent defects and internal packing conditions i.e., the defect which cannot be visually seen.

Rates

In respect of rates the only thing to be careful is that where alternative rates are prescribed, it must be got noted from the parties whether they elect O-R. Rates or R R. Rates. In this case, parcel staff of the Railways must be careful. In majority of cases they do not get forwarding notes endorsed in this regard about commodities booked at ½ parcel Rates, ¼ parcel rates or at special reduced Rates. Under the law they must do so or also they should issue certificates to the parties for having booked goods at R.R. Rates.

Type of Wagons

Next comes entry about selection of a particular type of wagon. Here in the main two problems arise.

(a) Firstly, where a party has option to select open wagons instead of covered wagons. In this regard Sec. 75/A IRA says that if a party elects open wagons, for goods which would normally be carried in covered wagons, then he should so endorse the Forwarding Note and thus the Railway does not stand liable for damage, deterioration or destruction of goods, caused only by their carriage in open wagons. Evidently, the damage etc. in this case relate to climatic conditions.

But suppose, the Railways supply only open wagons to the party and say that they have no covered wagons available. Can it be said that the sender has elected open wagons for carriage? This is a moot point and not yet finally decided by Courts. But consensus of opinion is that in such a case no choice has been left with the sender and hence he cannot be deemed to have elected the open wagon and thus railway cannot seek protection against damages etc. caused on account of open wagons being used.

In such a case where party selects open wagons there should be clear indication in Forwarding Note that he has selected the open wagon and it was not thrust over it.

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Another point in this regard, towards which needs special attention is, that the forwarding notes are usually found to bear the following endorsements ;

"Open wagon selected by the sender". Such remarks are useless and incorrect and should invariably be avoided. Instead they should be of the form "Open wagon selected by me/us".

(b) The second condition, is in respect of perishable goods which should be loaded normally in CA type wagons. But if they are loaded in any other type of wagon, then what is the position? The Railways Act is silent on this point. But rules exist to this effect and in some cases Courts have held Railway liable for loading such goods in other types of wagons. Hence it is safest, in case CA type wagons are not available, to advise parties of this fact and if they elect to send the perishable commodities in other types of wagons then to get this fact suitably endorsed in forwarding notes.

Here, I may mention that rule 109 of Goods Tariff No. 32 is of no protection to Railways and is ultra vires to the extent of two conditions mentioned above.

Percentage Charges

Then comes the column for payment of percentage charges on excepted articles and animals etc. Here again importance of proper description of goods becomes evident. The Railways have to find out on description given by the senders, whether the goods come under the category of excepted articles or not. Where excepted articles or animals are tendered for booking, the railways should invariably get their values declared on forwarding notes so as to find out whether percentage charges are to be claimed or not. The Law says that demand for percentage charges is necessary and the Railways are exempted from liability only when the senders refuse to pay percentage charges. Since there is no provision for demand to be made in writing, it can only be inferred either by payment of percentage charges (or agreeing to it) or by endorsement on refusal of Forwarding Note to pay it, by the senders.

Other columns are not of much importance, and hence left out. But the last thing which I have to say is that all the above noted entries are to be made by the senders themselves or by their authorised agents and in no case should the Railway Employee fill them in (except of course, when he himself is a sender). Also this side of forwarding note should be clearly and legibly signed by the senders or their agents and their signatures should be decipherable (or be got deciphered, whenever necessary). Unsigned forwarding notes are only waste papers and in case of improperly signed or undeciphered signatures it has been found very much difficult to prove execution of such Forwarding Notes in Courts. Lastly all cuttings should be got countersigned by the senders or their agents.

Railway's in the Forwarding Note :

We now take up the other side of the Forwarding Note, to be filled In by Railway Staff. (A) Special care should be taken in recording the weighment particulars and slip-show methods should be avoided. Such instances have come to notice where the goods were not weighed by the Railway staff and imaginary entries were recorded in Forwirdtng Note. Such action, put Railway in jeopardy in cases of claims for shortages and in most cases it has become difficult to defend Railway in Courts for shortages. In case of percentage weighment it should be mentioned whether bags were of uniform size or otherwise.

In no case should weighment be treated as mere formality. It is a very important factor in determining the liablity in many cases. Underweighments and overweighments are also in practice, which put the Railway at loggerheads in deciding compensation claims. I quote one typicial example. A consignment (case) was booked from Moradabad to Lucknow with weight shown in RR as 14 Kg. On reaching Lucknow it was found to reweigh 10½ Kg. It was got rebooked and reaching Moradabad its weight was found 9½ Kg. The case throughout remained sound and there were no indications of tampering or leakage of contents etc. The claim in this case could not be resisted as the continuous shortages in weight remained unexplained. It is conceiveable that when weighing machines of both the places forwarding and destination stations) are in perfact order, then a negligible percentage of difference in weighments may occur.

In consignments comprising of wagon loads, an unusual practice has been found to be in vogue. In such cases instead weighing prescribed percentage of bags etc., the staff writes down imaginary weighments, bringing grand total equal to the one declared by senders, while at destination on cent per cent weighments much higher differencer were found.

In such cases, as already said, proper disposal of compensation claims becomes too difficult because real shortage cannot be ascertained and even it is impossible to decide whether there was in fact any shortage? In suits of such a nature, the courts invariably ask the Railways to explain discripancy in weighments. when weighing machines at both places are in order and the Railways give no explanation. This is not the case in respect of only outward consignments but of inward consignments also. Hence when consignments reach destination in defective or leaky state, the staff anticipating further shortage, issue messages for much more than actual shortage while at the time of delivery goods are found to weigh more than what was shown in messages.

Here, I may submit, that most of the parties have complete knowledge of these

tactics on our part and they do not hesitate to make full use of these discrepancies to obtain undue advantages.

Thus I would suggest that in weighments Railways have to be more particular.

Rebooking Conditions of Goods Packing & Weight :

While closing discussion on forwarding notes I may point that discrepancies in respect of packing conditions and defective conditions of goods and weight have been more frequent and obvious in cases of Rebookings of consignments. The most common practice is to prepare rebooking RR exact replica of original RR, so far as these things are concerned and actual conditions and weights of goods at the time of rebooking are not taken into account. This practice very much adversely effects the interest of the Railway in disposal of compensation claims. Let us consider the matter in light of the law as it stands.

Suppose, consignment is booked from Allahabad to Gorakhpur It reaches. Gorakhpur, and remains lying there for some time and is damaged and loses weight and then it is rebooked at senders' request to Allahabad where its open delivery is taken and claim is preferred for damages and shortage. In such a case the Railways can take any of the following defences:

(A) If party bases his claim only on re. booking particulars then the Railways resist claim on grounds that damages occurred prior to rebooking on which there had been no claim.

(B) If party bases his claim on original booking particulars then defences can be (a) damages having occurred within 30 days of termination of transit at Gorakhpur and there being no negligence or misconduct of Railway, it is not liable; (b) damages occurred after 30 days of termination of transit and Railway is not liable in any case.

But if the Railways had not given actual conditions and weights of goods in rebooking RR, then the Railways cannot locate as to when, where and how damages took place and a clear rebooking RR being given, they cannot put in the plea of damages having taken place prior to rebooking.

Thus actual conditions of goods and packing and actual weight of goods at the time of rebooking must be shown in the rebooking RR as well as in Forwarding Note, called from senders for this purpose.

Railway Receipts

We next take up Railway Receipts. They are equally important with Forwarding Notes. Let us first examine the questions: "Why are they called 'Receipts'?" "What is their significance?" "They are receipts for what?"

To understand, the reply to these questions, we have first to examine a Railway Receipt. What does it contain? We shall find that it contains all important entries of both sides of forwarding note. What is its significance? For this we have to understand as to what a contract is? Suppose one party wants another to do some job for him and he puts forth his conditions. The other party considers them and accepts. These terms may be reduced in writing to avoid future conflicts about the terms, then this is a contract. Hence a contract constitutes an offer from one party and acceptance by the other. That is why a forwarding note is called the basis of contract between the sender on the one hand (who lays down his conditions in it) and Railway on the other (who lays down his conditions in it) and Railway on the other (who puts its terms of agreement on the other side). So when a forwarding note is accepted, the contract is completed. But the sender does not get anything in acceptance of the contract. What proof he has about completion of contract? or what proof Railway possesses that it communicated its acceptance to the sender? That proof is Railway Receipt. That is why it is called 'Receipt' because it is receipt of contract having taken place between Railway and sender. That is why it contains all important entries of both sides of forwarding note exhibiting terms and conditions of both parties on which they have agreed.

Having understood this, it becames clear that whenever Railways have to refer to the terms and conditions agreed upon between the sender and Railway, they have not always to refer to forwarding note, but to Railway Receipt. So the important point about RR that is to be kept in mind is that it must bear all important entries of both sides of forwarding note and nothing should be left out.

Luggage : '

We now consider the journey of the consignments. Here it may be pointed out that liablity of the Railways for the goods begins at the moment they accept them irrespective of the fact whether any RR has been issued or not. Rule 135(1) of Goods Tariff has been held to be inapplicable. Hence the Railways should begin the care for goods since the moment they come into their custody.

The only case where Railway's liability does not begin with only acceptance of articles is that of Luggage, in which case Railway's liability state only after granting of Receipt by it.

After acceptance of goods they should be examined with the entries of forwarding notes and discrepancies be got rectified by the senders and private marks be noted in the RR.

Gui ance

Next document. important for purposes of mpensation claims is guidance. The im rtance of this document should be evi

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dent in context of the law in vogue. Sec. 76-F IRA says down that in cases of consign ments booked at O.R. Rate the Railways are bound to disclose transit to the senders. Also, in all cases, the party can demand transit particulars from Railways under the Indian Evidence Act. Moreover, for tracing the consignments, for connecting the unconnected consignments, guidances play a very important role. They also locate the damages caused to the goods. They should, therefore, be properly prepared and preserved. In order to prevent abnormal delays in tracing goods from point to point, a centralised guidance section is opened at Head quarters of each division to which office the guidances prepared must be sent. Illegible, incomplete, and undecipherable preparation of guidances puts their very purpose at nought and should be avoided.

Transit Particulars :

Claims and suits for damages due to delays in transit are filed every year in a good number and a majority of them relate to perishable goods, Here Railways have not only to furnish transit particulars, in such cases, but also to explain delay? whenever they have occurred, because, in law, they cannot held liable for damages, if and only if they were caused by the delay in transit.

In this regard, the the transit records are badly lacking. Wagons, holding goods, remain at a particular station detained for days together and no explanation is forthcoming for their detention. Cases of yard congestions, non-availability of power, no-room in brake vans fall in this category. Here if may be pointed out that the courts have held Railways liable for non-availability of power; and if we fail to prove abnormal conditions of yard congestions etc. we become liable. Thus documents relating to transit - whether they be relating to yard Master's Office, or of Operating Department must bear proper explanations for delays occurred.

To emphasize, the importance of guidance and transit records, I hereby point out as to what the law requires of the Railways in certain cases :

(a) In cases of consignments destroyed by fire accidents or subjected to Running Train Thefts the Railways have first of all to prove that the consignment was in the wagon, just prior to the fire accident or Running Train theft. This Railways can prove by the guidance of the last repacking-point and sealing of the wagon:

(b) In cases of breaches the Railway have to prove that the consignment was damaged for destroyed on account of the breach and its despatch by another route was impossible due to traffic jams or else it was sent by a longer route due to breach involving delay in transit.

(c) Particulary, in cases of damages and fire accidents the guidances have played an important role, as they clearly go to show

whether Railways have loaded any inflamable, or dangerous goods with goods of genea- al character of oil consignments with bales etc., causing damages to the bales due to leakage of oil.

(d) In cases of cotton yarn and Handloom clothes it is noticed that the bales containing them travel throughout without and adverse remarks about their conditions, but no unloading at destination they are found with "covering torn, repaired, resewn, spotted and damaged by wet" and deliveries are granted on assessment. This fact clearly establishes that in transit the conditions of the goods are not properly described and records with the result that the courts place no reliance on Records of Railway's observing that so much of damages cannot occur only in lost lap of journey and thus hold that Railways have committed negligence and misconduct.

Destination :

On consigments reaching at destination.

(a) its condition and weight (where required) should be clearly got noted.

(b) where the goods remain undelivered, their day to day condition, at least upto 30 days (reconing after expiry of free time allowed) should be invariably got noted;

(c) notice u/s 55 & 56 IRA should be properly filled in showing charges due and got served on the parties.

(d) while delivering goods, safeguard against wrong deliveries should be invariably taken in terms of existing rules. Wrong deliveries may be placed in 3 categories :

(i) where goods of one RR have been delivered to or removed by consignee of another RR. In such cases Railways are liable and law does not provide any protection to them,

Forged endorsement[5]- Where goods are delivered to wrong party due to forged endorsements on genuine RR. In such cases law protects the Railways for such wrong delivery provided they prove to have acted in good faith, the Railways cannot plead good faith if they have not satisfied ourselves about the genuineness of the party claiming delivary and deliver the goods in routine manner.

Forged Railwaw Receipt - where delivery is given on forged RR the Railways are not protected by law from liability, unless the case falls u/s 74 or 77(1) IRA. In the latter cases also, they are protected only when they prove that they had taken care as was needed of them and acted in good faith while delivering goods.

In this regard, it may be pointed out that in almost all cases of deliveries on forged RRs material differences were found in entries of original RRs and forged RRs many of whom were clearly discernable to the naked eye. In most of the cases, had

even been entries of forged RR compared with those of delivery books, the discrepancies could have been detected.

The Courts have clearly held that the purpose of the third copy of RR is to check against fraudulent deliveries and thus these third copies should not be parted with by the delivering staff until the delivery is effected.

It, therefore, becomes imperative for Railway (1) to check entries of RR with those of delivery books and third copy of RR and (2) deliver the goods on satisfying about the party to whom they are being delivered.

Of late, the cheats have adopted a unique method of obtaining deliveries through the regular forwarding agents and this fact needs to be borne in mind while delivering goods.

(e) Abnormal delays in granting assessments and open deliveries have been seriously viewed by the courts; Moreover, they raise an additional and avoidable and controversial issue as to on whose account (party's or Railway's) further damage or deterioration, after the arrival of goods has been taken and to what extent?

(f) In case of conflict about extent of damage or deterioration between views of party and Railway staff, counter-remarks expressing Railways opinions may be given over and above remarks of the party and whenever possible, opinions of a few independent parties may also be obtained.

(g) All open deliveries and assessment reports should be invariably got countersigned by the party.

Thus we have covered wide range and the view expressed herein this discussion are based on the decisions of the law-courts.

I shall now only point out the other topics introduced by the Amending Act of 1961 on which the law is still in making.

(A) Railways have been protected for loss, non-delivery etc.' in respect of what we call – 9 fruits. Among them are : (i) any act or omission or negligence of the party or his agent, (ii) natural deterioration etc. to inherent defect, quality or vice of goods, (iii) latent defects, (iv) fire etc.

But Railways have to prove reasonable care and foresight in handling them, Hence records of Railways must already show, whenever necessary (a) as to what act or omission or negligence of party resulted in any of these perils; (b) the goods deteriorated due to their nature; (c) what latent defects caused them and (d) in case of fire etc. the Railways did every thing in their power to extinquish it without loss of time; and in respect of them all they took care that was reasonably expected of them. "Reasonable" may be anything according to circumstances of each case, but it is not of "high order".

(B) The Railway have now been held liable for delay or detention in transit[7] unless it is proved that it was unavoidable. And as already pointed out special care is to be taken by the Railway to avoid delays and detentions in transit.

(C) In cases of goods delivered at siding the Railways[8] must inform owner of siding, in writing, about placement of goods there and obtain his written acknowledgement thereof otherwise and until they obtain the said acknowledgement, they stand liable for any loss, destructions etc., caused to the goods even at siding.

(D) Railways are also protected for any fraud on the part of the party or for improper loading or unloading of goods.[9]

Here, again, the nature of fraud perpetrated and exact facts about loading and unloading should be mentioned. Here mention "not loaded as per Rules" in RR is not sufficient.

1. Section 74 – Railways Act.
2. Section 95-A - Railways Act.
3. Sections 77-A for animals and 77-B for Goods.
4. Section 75.
5. Section 76-B.
6. Section 73, Ibid.
7. Ibid., Section 76.
8. Section 76(c).
9. Ibid., Section 78.

REPORT SECTION

Recent Decisions of the Supreme Court of India

Before Y. V. CHANDRACHUD, C.J.

P. S. KAILASAM & A. D. KOSHAL JJ.

Civil Appeal No. 158 of 1978

27-10-1978

Gurudev Singh Patiala-Appellant.

Vs.

Baldev Singh, M.L.A. Patiala

Respondent.

Representation of the People Act (1951) S. 123 (5)—Election Challanged on the ground of hiring of vehicles for carrying voters to the polling booth by candidate-Failure to file written complaints with concerned Returning Officer and the Presiding Officer. Challange u/s. 123 (5), held not maintainable.

In order to amount to a corrupt practice under section 12 (5) of the Representation of the People Act, 1951, it is necessary that there should be hiring or procuring, whether on payment or otherwise, of any vehicle by a candidate or his agent or by any other persons with the consent of a candidate or his election agent, for the use of such vehicle for the free conveyence of any elector. It was submitted that though the petitioner had seen certain vehicles carrying voters at that time he did not have information that the respondent had hired vehicles and that they were used for free conveyance of any electors This information he obtained only later and that is why he could not have made a complaint to the Returning Officer at that time. On a reading of the evidence of the appellant, we are unable to accept this plea. The petitioner stated in his evidence that he was going round his consitituency on the day of the polling and had seen voters being carried by the respondent's supporters to various polling stations. In the Chief Examination he did not explain that the failure to give a complaint was due to the fact that he was not aware that it was the respondent who had hired the trucks. In cross-examination he admitted that he did not make any written complaint to the polling officer of any polling station nor did he make a written complaint to the S D.M. who was acting as Returning Officer of this constituency. He admitted that in fact he made one complaint to the Returning Officer about Bazurak polling station that the Presiding Officer Sukhdev Singh had been canvassing the voters to vote for the respondent but even in that he did not mention that the voters were being carried in hired trucks. In cross examination the petitioner admitted that he did not make any complaint but did not come forward with the explanation that he was not aware of the fact that the respondent had hired the trucks In the circumstances, we are unable to accept the explanation put forward by the learned counsel for the petitioner at the Bar for the failure of the petitioner to complain to the Returning Officer about the hiring of vehicles.

PRESIDENT'S RULE IN ACTION : A CASE STUDY OF PUNJAB

Subhash C. Arora*

India is a 'Union of States'[1] though the Constitution appears to be more solicitous about the 'Union' than about the States. Dr. B.R. Ambedkar, Chairman of the Drafting Committee, emphasized in the Constituent Assembly:

"The Basic Principle of Federalism is that the Legislative and the Executive Authority is partitioned between the centr and the States not by any law to be made by the Centre but by the Constitution itself." He also added that "the Centre and the States are co-equal."[2]

Dr. Ambedkar not only described India as a federation but also admitted that the Constitution contained a "dual polity" - the Centre and the State- each enjoying "sovereign powers to be exercised in the field assigned to them by the Constitution."[3]

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2. Article 1 (Henceforth written as Art.) t over

3. India, Constituent Assembly Debates (Henceforth C.A.D.), Volume (Henceforth written as Vol.) VI All references to India, Constituent Assembly mirant this Chapter are printed by Manager, Governmer Press, Faridabad. Reprinted by the Lok Sabha ndowed, New Delhi. of

4. ibid. ovements of

'Federation' in India is a p-rinciple of reconciliation between two diver-ent tendencies: Centrifugal and Centripetal. The Federation is a process of division of powers be'ween the Centre and the constituent units. T'is division of powe's is bound to be influenced, if not determined, 'y political, economic, social and fi'ally financia' co'sidera'io's. If in any federation, an equilibrium be'ween the Centre and 'he States has to be achieved and main'ained, some necessary checks and balances have to be devised, so that neither the Central Covernment becomes too powerful to ride ro'ghshod over State autonomy and jeopardize the unity and integrity of 'he country, nor the St'tes dare chal'enge the legitim'e authority of the cen're The tilting of balance in favour of either side may cause complications and dis'ortion of the whole structure, thus posing a po'ent threa' to the survival of the system itse'f.

The framers of the Cons'itution endeavoured t' devise a scnemeof government which was to e federal ut with a s'rong centre. Some members of the Consti'uent A'sembly, however, ventilated their apprehensions that thedocument had 'brutally butchered' the 'ederal pri'ci le. O'e of them, K.T. Chacko, main'ained that the Cen're was predominant over the States. He asse'ted: "... I mu't say that in the Constitu'ion the Centre is remaining supremely predomi'ant just like a mother-in-law, who is jealous, young, endowed, mischievous and also autocratic placing all sorts of restrictions and obstructions in the way of the movements of

a young married couple."[4] Constitutional experts and distinguished jurists have described the nature of the Indian Federalism in various ways. K.C. Wheare classified the Indian Constitution as quasi-federal and refused " to discuss it as an example of a federal Constitution."[5] C.H. Alexandrowicz wascritical of the term 'Quasi-federation' used for the Indian Constitution. He says that it would not be irrelevant to ask whether the term 'Quasi-federation' conveys any precise meaning at all. The use of the term 'Quasi' in legal terminology proved meaningful in exceptional cases only. For example, he states in the expression 'Quasi-judicial' the addition of 'quasi' serves the purpose of indicating the application of approximately judicial methods in administrative proceedings. 'Quasi-legislative' powers proved helpful to justify and explain delegation of legislative powers to the Executive. But in the expression 'quasi-federation' the word'quasi' hints at a deviation from the federal principles without indicating what kind of special position a particular quasi-federation occupies between a unitary States and a federation proper. It may be suggested that federations established from above for administrative conveniences only be termed 'administrative federations. Alexandrowicz said that India is a case of '<u>Sui-generis</u>.'[6]

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4. <u>ibid</u>., vol. XI, p. 745.

5. K.C. Wheare, <u>Federal Government</u> (Oxford, 1963), p.77.

6. C.H. Alexandrowicz, <u>Constitutional Development in India</u> (Oxford, 1957), p. 169.

Granville Austin is of theview that the Constituent Assembly of India was perhaps the first Assembly which adopted from the very start what is called the concept of 'Co-operative Federalism.'[7]

Morris Jones ta ks of Federalism in India as an example of the concept of 'Bargaining Federalism.'[8] He says that Federalism in India is a form of "Co-operative Federalism" but he says that this phrase should be understood to include hard competitive bargaining.

The framers of the Constitution opted for the word 'Union' rather than 'Federation' in describing the Republic in India. The Indian Constitution is guaranteed to nurture the integrity of India. Even, though our Constitution is described as federal, its unitary bias is unmistakable.

Union Strengthened

Article 249 of the Indian Constitution empowers the Parliament to enact legislation on any State subject provided the Rajya Sabha, by a two-thirds majority, authorized it. Article 312, authorizes the Parliament to create new All India Services which are common to theCentre as well asthe States. With Articles 200 and 201 the Governor is empowered to reserve a bill, duly passed by the State Legislature for

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7. Granville Austin, The Indian Constitution : Cornerstone of Nation (Oxford, 1974), p. 187.

8. Morris Jones, The Government and Politics of India (Bombay, 1974), p. 152.

the final approval of the President who enjoys a right to veto. Article 256 places a State Government under an obligationto exercise its executive power in such a way as to ensure compliance with the laws made by the Parliament and to this end the Centre is empowered to issue necessary directions to it.

Not satisfied with the general powers of the Union to impart directions to the States, the Constitution goes a step further and calls upon every State under Article 257[9] not to impede or to prejudice in the manning of executive powers of the Union in the State. If any Union agency finds it difficult to function within a State, the Union Executive is empowered to issue appropriate directions to the State Government to remove all obstacles.

Article 365 expressly provides that wherever any State fails to comply with, or give effect to, any directions in the exercise of the executive powers of the Union, it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. This provision gives sweeping powers to the Centre and highlights

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9. Article 257 A empowers the Union to deploy armed forces into a State. The Forty-Second Amendment subordinates Statesto the Union as the Central Government would without any prior consultation with, or information to the State Government be able to deploy, station and use the security forces and other union forces, e.g. the Central Reserve Police, the Border Security Force, etc. This provision arms the Union with a coercive power, apart from the existing power under Article 365, read with Article 356, and to that extent, adds another centripetal force to the federal structure. However this provision had been deleted by the Forty-Fourth Amendment Act.

the subordinate position of the States.

By exercising the Emergency Provision of the Constitution, the distribution of powers can be so drastically altered that the Constitution becomes 'Unitary' rather than 'Federal.'[10] The Emergency Provisions comprise nine articles of part XVIII of the Constitution. The Constitution of India contains elaborate provisions under Article 352-360 to deal with unforeseen emergent situtions which may arise from either external aggressionor internal revolt or constitutional, financial, or administrative crises in the country as a whole or in an individual constituent unit of the Union. Once the President (in effect the Central Cabinet) is satisfied that an abnormal situation has arisen calling for extraordinary means to combat it, he (President) can invoke emergency provisionsof the Constitution.

If the President is satisfied that a grave emergency exists whereby the security of India or any part of its territory is threatened by war, external aggression or internal disturbance, he may, under Article 352 proclaim a state of emergency. The power may be used even before the actual occurrence of the aggression or disturbance, if the President opines that there is an immediate danger. Within the provisionsof the emergency, inroads are very likely to be made into the federal provisionsof the Constitution. In case of an emergency, there is a two-fold expansion of the authority of theUnion. First, the executive power of the

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10. Austin, n. 7, p. 207.

Union Parliament extends to the subjects enumerated in the State List.

Article 355 places a "duty" on the Union to protect the States against external aggression or internal disturbance and to ensure that the government of every state is carried on in accordance with the provisionsof the Constitution. Dr. Ambedkar justified the inclusion of the Article on the following grounds:-

First, ours is a federal Constitution and the Centre cannot interfere in provincial matters, unless there is a Constitutional provision for it;

Secondly, this provision is provided by placing an obligation on the Union to protectthe States from external aggression and internal disturbance;

Thirdly, by the adding one more obligation, viz., "to maintain the Constitution in the provinces as enacted by this law."[11]

K.V. Rao criticised the inclusion of this article in the Constitution on the ground that Article 355 is not only superfluous but also misleading. He retorted that it gives us a wrong idea of the nature of our federation as if it were out of a contract among autonomous provinces that a federation with defined powers had arisen.[12] Article 355 is a source of

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11. K.V. Rao, Parliamentary Democracy of India (A Critical Commentary), (Calcutta, 1965), p. 273.

12. ibid.

powers, but its complementary article 356 specifies that it can be invoked only in a case where the "government of a State cannot be carried on in accordance with the provisions of the Constitution."[13]

The Constitution empowers the President of India even to dismiss a popularly elected ministry in a State. The suspension of the Constitutional provision relating to a responsible government in a State is an extraordinary federal feature of our Constitution. Article 356, the above stated unusual Constitutional provision commonly referred to as the instrument to impose President's rule in action in theState of Punjab constitutes the main theme of this paper.

President's Rule

Article 356 provides for imposition of President's rule in States to combat a situation 'in which the Government of the State, cannot be carried on in accordance with the provisions of the Constitution.'

The expression "in accordance with the provisionsof the Constitution," is ambivalent and vague.[14] Even the framers of the Constitution felt it to be so, and questioned Dr. Ambedkar about its meaning. Dr. Ambedkar, however, evaded answering the question by resorting to legal sophistry. The Constitution of India is rightly called "lawyers" paradise"

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13. Austin, n. 7.

14. Naziruddin Ahmad, O.A.D., Vol. IV, p. 162.

because it is replete with more than one such evasive statement which makes it vulnerable to various interpretations. This evasion was to cost India dear.[15]

Now the question arises, what is the Constitutional machinery, the failure or imminent failure of which the President can deal with under Article 356? Is it enough if a situation has arisen in which one or more provisions of the Constitution cannot be observed?

The 'failure of the Constitutional machinery' might mean a situation when the Governor of a Province is unable to find a Council of Ministers (Articles 163 and 164) to aid and advise him. This provision had precisely this implication in Section 93 of the Government of India Act, 1935 from where it was originally lifted. The meaning of the term "in accordance with the provisionsof this Constitution" may broadly include the following:-

(i) Political breakdown and political deadlock: "This is a point which requires careful analysis. A political breakdown can happen when no Ministery can be formed or the Ministries that can be formed are so unstable that the Government actually breaks down,[16] or where a Ministry having resigned, the Governor finds it impossible to form an alternative

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15. H.M. Seervai, The Emergency Future Safeguards and the Habeas Corpus Case, A Criticism (Bombay, 1978). p. 105.

16. C.A.D., Vol. IX, p. 153.

government[17] or where for some reason or the other the party having a majority in the Assembly declines to form a Ministry and the Governor's attempts to find a Coalition Ministry able to command a majority have failed.[18]

(ii) When the party alignment in the State is such that no stable government can be formed, as it happend/ in pre-De Gaulle France, giving constant headache to the Governor of to find a stable Ministry.[19]

(iii) When the breakdown occurs owing to the Ministry in the State refusing to follow the directions of the Centre.[20]

(iv) "There may be physical breakdown of the Government in a State, as for instance, when there is a wide-spread internal disturbance, violence or revolt by the State,[21] or external aggression or for some reason or another, law and order cannot be maintained[22] or disturbance and chaos occurs.[23]

(v) There is another contingency of economic breakdown.

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17. State of Rajasthan v. Union of India, A.I.R. 1977 SC 1361.
18. ibid.
19. C.A.D., Vol. IX, p. 149.
20. ibid., p. 157.
21. ibid., p. 120
22. ibid., p. 153
23. ibid., p. 149.

For instance, there may be a State where the Ministry is all right, but it wants to make itself popular by reducing or cancelling all taxes and running its administration on a bankrupt basis. Instead of paying their Government servants and meeting their obligations the State goes on accumulating its deficits.[24]

(vi) When "The State's economic Plansmay be contrary to the economic programmes of the Centre. Central imposition of its economic, language or prohibition policy on a recalcitrant State may precipitate a Constitutional crisis. Gross misconduct and maladministration may also necessitate the promulgation of Article 356 in order to uphold the integrity and supremacy of the Constitution.[25]

(vii) "When the Ministry is absolutely corrupt and is misusing the machinery of the Government for dishonest purposes but is firmly saddled in power backed by a comfortable majority."[26]

(viii) Where a Ministry, although properly constituted, acts contrary to the provisions of the Constitution or seeks to use its powers for purposes other than the ones permitted by the Constitution.[27]

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24. ibid., p. 154.
25. State of Rajasthan v. Union of India, A.I.R. 1977 SC 1361.
26. B.C. Das, The President of India (Delhi, 1977), p. 413.
27. State of Rajasthan v. Union of India, A.I.R. 1977 SC 1361.

(ix) "There may be mass violence with the sympathy of the Party in power in the State.[28]

The other circumstances that may lead to political instability and breakdown of the parliamentary system of Government are:-

(x) (a) Defections ~~mmx~~ by the members of the legislature.

(b) Passing of no-confidence motions against the Council of Ministers.

(c) Resignation of the Chief Ministers for various reasons.

(d) Absence of legislatures in the newly-formed States.

(e) Public agitations in the State leading to instability in the administration.[29]

Duration

The following table indicates the duration of the President's rule in different States in chronological order:-

President's rule in States under Article 356 of the Constitution of India.

Sl. No.	State	Date of Proclamation	Date of revocation	Duration of President's Rule		
				Years	Months	Days
1	2	3	4	5	6	7
1.	Punjab	20.6.1951	17.4.1952	0	9	28

28. B.C. Das, The President of India (Delhi, 1977), p. 413.

29. President's Rule in the States, Lok Sabha Secretariat (New Delhi, 1987), p. 1.

1	2	3	4	5	6	7
2.	Pepsu	4.3.1953	7.3.1954	1	0	3
3.	Andhra	15.11.1954	28.3.1955	0	4	13
4.	Travancore-Cochin	23.3.1956	1.11.1956	0	7	9
5.	Kerala	1.11.1956	5.4.1957	0	5	4
6.	Kerala	31.7.1959	22.2.1960	0	6	22
7.	Orissa	25.2.1961	23.6.1961	0	3	29
8.	Kerala	10.9.1964	24.3.1965	0	6	14
9.	Kerala	24.3.1965	6.3.1967	1	11	10
10.	Punjab	5.7.1966	1.11.1966	0	3	27
11.	Rajasthan	13.3.1967	26.4.1967	0	1	13
12.	Haryana	21.11.1967	21.5.1968	0	6	0
13.	West Bengal	20.2.1968	25.2.1969	1	0	5
14.	Uttar Pradesh	25.2.1968	26.2.1969	1	0	1
15.	Bihar	29.6.1968	26.2.1969	0	7	28
16.	Punjab	23.8.1968	17.2.1969	0	5	25
17.	Bihar	4.7.1969	16.2.1970	0	7	12
18.	West Bengal	19.3.1970	2.4.1971	1	0	14
19.	Kerala	4.8.1970	3.10.1970	0	2	0
20.	Uttar Pradesh	1.10.1970	18.10.1970	0	0	17
21.	Orissa	11.1.1971	23.1.1971	0	0	12
22.	Orissa	23.1.1971	22.2.1971	0	2	0
23.	Orissa	23.3.1971	23.4.1971	0	0	11
24.	Mysore	27.3.1971	20.3 1972	0	11	22
25.	Gujarat	13.5.1971	1 .3.1972	0	10	4
26.	Punjab	15.6.1971	17.3.1972	0	9	2
27.	West Bengal	29.6.1971	20.3.1972	0	8	22
28.	Bihar	9.1.1972	8.3.1972	0	1	29
29.	Bihar	9.3.1972	19.3.1972	0	0	10

1.	2	3	4	5	6	7
30.	Manipur	21.1.1972	20.3.1972	0	2	0
31.	Tripura	21.1.1972	20.3.1972	0	2	0
32.	Andhra Pradesh	18.1.1973	10.12.1973	0	10	22
33.	Orissa	3.3.1973	[illegible].3.1974	1	0	3
34.	Manipur	28.3.1973	[illegible].3.1974	0	11	4
35.	Uttar Pradesh	13.6.1973	8.11.1973	0	4	26
36.	Gujarat	9.2.1974	18.6.1975	1	4	9
37.	Nagaland	22.3.1975	25.11.19[illegible]7	2	8	3
38.	Uttar Pradesh	30.11.1975	21.1.1976	0	1	22
39.	Tamil Nadhu	31.1.1976	30.6.1977	1	4	29
40.	Gujarat	12.3.1976	24.12.1976	0	9	12
41.	Orissa	16.12.1976	29.12.1976	0	0	13
42.	Punjab	30.4.1977	20.6.1977	0	1	21
43.	Rajasthan	30.4.1977	22.6.1977	0	1	23
44.	Orissa	30.4.1977	26.6.1977	0	1	27
45.	Haryana	30.4.1977	21.6.1977	0	1	22
46.	Himachal Pradesh	30.4.1977	22.6.1977	0	1	23
47.	Madhya Pradesh	30.4.1977	23.6.1977	0	1	24
48.	Uttar Pradesh	30.4.1977	23.6.1977	0	1	24
49.	West Bengal	30.4.1977	21.6.1977	0	1	22
50.	Bihar	30.4.1977	24.6.1977	0	1	25
51	Manipur	16.5.1977	29.6.1977	0	1	13
52.	Tripura	5.11.1977	4.1.1978	0	2	0
53.	Karnataka	31.12.1977	27.2.1978	0	1	27
54.	Sikkim	18.8.1979	17.10.1979	0	2	0
55.	Manipur	14.11.1979	13.1.1980	0	1	29
56.	Kerala	5.12.1979	25.1.1980	0	1	21

1	2	3	4	5	6	7
57.	Assam	12.12.1979	6.12.1980	0	11	24
58.	Rajasthan	17.2.1980	6.6.1980	0	3	18
59.	Gujarat	17.2.1980	7.6.1980	0	3	19
60.	Punjab	17.2.1980	7.6.1980	0	3	19
61.	Bihar	17.2.1980	8.6.1980	0	3	20
62.	Tamil Nadu	17.2.1980	9.6.1980	0	3	21
63.	Orissa	17.2.1980	9.6.1980	0	3	21
64.	Madhya Pradesh	17.2.1980	9.6.1980	0	3	21
65.	Maharashtra	17.2.1980	9.6.1980	0	3	21
66.	Uttar Pradesh	17.2.1980	9.6.1980	0	3	21
67.	Manipur	28.2.1981	19.6.1981	0	3	21
68.	Assam	30.6.1981	17.1.1982	0	6	13
69.	Kerala	21.10.1981	28.12.1981	0	2	7
70.	Kerala	17.3.1982	24.5.1982	0	2	7
71.	Assam	19.3.1982	27.2.1983	0	11	24 9
72.	Punjab	6.10.1983	29.9.1985	1	11	24
73.	Sikkim	25.5.1984	8.3.1985	0	9	14
74.	Jammu & Kashmir	7.9.1986	6.11.1986	0	2	0
75.	Punjab	11.5.1987	President's rule is continuing.			

Frequency

President's rule was brought into operation for the first time in as early as 1951. In the initial years there were not many instances of its use. But, with the passing of years, these provisions have been invoked with increasing

frequency. This is evident from the data given below:-

Period	Frequency
1950-1954	3
1955-1959	3
1960-1964	2
1965-1969	9 (7 cases in 1967-69)
1970-1974	19
1975-1979	21 (9 cases in 1977)
1980-1987	18 (9 cases in 1980)

The figures reveal a sharp rise in the incidence of such cases from 1967 onwards. The Fourth General Elections saw the emergency in the country of a multi-party polity, fragmentation of political parties, and rise of regional parties. There was a sea change in the political scene. Coalition ministries were formed in a number of States for the first time. Many of them were unstable, being coalitions based on convenience rather than principle. The General Elections to Lok Sabha held in March, 1977, led to a land-slide victory of the Janata Party which thereupon formed the Union Government. The Union Home Minister wrote to the Chief Ministers of the nine Congress Party ruled States that they should seek fresh mandate. Some of them approached[30] the Supreme Court for a declaration that the Union Home Minister's

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30. State of Rajasthan v. Union of India AIR 1977 SC 1961

letter, asking for dissolution of their legislative Assemblies, was unconstitutional, illegal and ultra vires, but were not successful. President's rule was imposed immediately after the pronouncement of the Court's verdict: and simultaneously, the Assemblies of these nine States were dissolved. A similar situation arose in 1980, when in nine Janata-ruled States on similar grounds, President's rule was imposed following the victory of the Congress (I) Party in the General Elections to Lok Sabha. The propriety of this whole sale use of Article 356, in 1977 and again in 1980, has been widely questioned, the judgement of the Supreme Court notwithstanding. It is, therefore, apposite to examine the recommendations of Sarkaria Commission on Centre-State Relations, Report Part I (Government of India. p. 179-180) Nasik, 1988) on promulgation of President's rule.

RECOMMENDATIONS OF SARKARIA COMMISSION ON CENTRE-STATE RELATIONS (DELHI, 1988).

1. Sparingly, in extreme cases.

Article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify a break-down of constitutional machinery in the State. All attempts should be made to resolve the crisis at the State level before taking recourse to the provisions of Article 356. The availability and choice of these alternatives will depend on the nature of the constitutional crisis, its causes and exigencies of the situation. These alternatives may be dispensed with only in cases of extreme urgency, where failure on the part

of the Union to take immediate action Under Article 356 will lead to disastrous conseuqneces.

2. Warning

A warning should be issued to the errant State, in specific terms, that it is not carrying on the Government of the State in accordance with the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account. However, this may not be possible in a situation when not taking immediate action would lead to disastrous consequences.

3. Use of Alternative course.

When an 'external aggression' or 'internal distrubance' paralyses the State administration creating a situation drifting towards a potential breakdown of the Constitutional machinery of the State, all alternative courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation.

4. Political Breakdown

In a situation of political breakdown, the Governor should explore all possibilities of having a government enjoying majority support in the Assembly. If it is not possible for such a government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, if there is one, to continue as a caretaker government, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue.

The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electrorate. During the interim period, the caretaker government should be allowed to function. As a matter of convention, the caretaker government should merely carry on the day-to-day government and desist from taking any major policy decision.

5.(a). No dissolution of Assembly

If the important ingredients described above are absent, it would not be proper for the Governor to dissolve the Assembly and install a caretaker government. The Governor should recommend proclamation of President's rule without dissolving the Assembly.

(b) The State Legislative Assembly should not be dissolved either by the Governor or the President before the Proclamation issued under Article 356(1) has been laid before Parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.

6. (a) Governor's Report.

Normally, President's Rule in a State should be proclaimed on the basis of the Governor's report under Article 356(1).

(b) Normally, the President is moved to action under Article 356 on the report of the Governor. The report of the Governor is placed before each House of Parliament. Such a report should be "speaking document" containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the

existence or otherwise of the situation contemplated in Article 356.

(c) The Governor's Report, on the basis of which a Proclamation under Article 356(1) is issued, should be given wide publicity in all the media and in full.

7. Approval of Parliament.

Every Proclamation should be placed before ~~the~~ each House of Parliament at the earliest, in any case before the expiry of the two month period contemplated in clause(3) of Article 356.

8. Safeguards.

Safeguards corresponding, in principle to clauses(7) and (8) of Article 352 should be incorporated in Article 356 to enable Parliament to review continuance in force of a Proclamation.

9. Judicial Review.

To make the remedy of judicial review on the ground of mala fides a little more meaningful, it should be provided, through an appropriate amendment, that, notwithstanding anything in clause(2) of Article 74 of the Constitution, the material facts and grounds on which Article 356(1) is invoked should bemade an integral part of the Proclamation issued under that Article. This will also make the control of Parliament over the exercise of this power by the Union Executive, more effective.

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10. Substitution

In clause (5) of Article 356, the word 'and'occuring between sub-clauses (a) and (b) should be substituted by'or'.

The Ambit of President's Rule

The unquestioned assumption so far has been that there cannot be President's rule at the Centre. This assumption was challenged in mid-July, 1979, when President Sanjiva Reddy was confrontedwith a unique problem. What had nauseated him and the people at large was the stuff of the melodrama- the petty intrigues and manoeuvres, the haggling and the horse-trading, the mad scramble for ministerial berths, loaves and fishes thereby leading to defections, re-defections and counter-defections. Morarji Desai, the then Prime Minister was forced to resign in mid-July, 1979 when his Janata Party was plagued with internecine squabbles. President Sanjiva Reddy used his discretion in nominating Charan Singh as the Prime Minister with a proviso that the latter would seek the confidence of the House as early as possible. After a 24-day rule Charan Singh failed to secure the confidence of the House and resigned. However, before resigning, Charan Singh advised the President to dissolve the Lok Sabha and order a mid-term poll. The President instantly accepted the advice of a care-taker Prime Minister. However, the President's acceptance and dissolution of the Lok Sabha invited a lot of criticism.

Challengages Involved : Moot Points

The promulgation of the Presidential Rule may entail a

violation of Fundamental Rights when the President acting under Article 356(1) dissolves the Legislative Assembly of the State and the members of the concerned State are deprived of their right to receive salary, perks and allowances. The question arises, would that be unconstitutional infraction of their right to property under Articles 19(1) (f) and 31? Are the members of the State Legislatur entitled to move High Court/Supreme Court under Article 32 for preventing such infraction on their Fundamental Right to Property?

The Supreme Court's verdict in the State of Rajasthan v. Union of India[31] sets at rest any doubt about the infringement of the legislator's Fundamental Rights and affairms that such an accusation is unfounded. It reads that

> it is only where there is direct invasion of Fundamental Right or imminent danger of such invasion that a petitioner (Member of dissolved Legislative Assembly) can seek relief under Article 32. The impact on the Fundamental Right must be direct and immediate and not indirect or remote. Merely because, by the dissolution of the Legislative Assembly, the petitioners would cease to be members and that would incidentally result in their losing their salary, it cannot be said that the dissolution would infringe their right to property.32

Another question that arises is: whether a dissolved State can claim the dissolution to be the result of a dispute between itself and the Union and whether it can claim relief under Article 131 (which enjoins upon the Supreme Court to

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31. A.I.R., 1977 SC 1361.

32. ibid.

decide disputes between one State and another or between the Government of India and one or more States). The Supreme Court in its verdict once again in the State of Rajasthan v. Union of India[33] decided this issue. It advocated that the framers of the Constitution have used the word "State" in Article 131 both deliberately and advisedly so as to contemplate the State as a constituent unit of the Union along with its territory and permanent institutions. The question as to the personnel who run these institutions is wholly unrelated to the existence of a dispute between a State and the Government of India. It is only when there is complete abolition of any of the permanent institutions of a State that a real dispute may arise. A mere temporary dissolution of an Assembly under Article 356 does not amount to an abolition of a State Assembly, because after such dissolution under the provisions of the Constitution elections are bound to follow, a new legislature would evidently come into existence.[34]

Should the President's Rule be imposed in States prior to Assembly polls is the next question which confronts us. However, the Election Commissioner had suggested to the Centre to impose the Presidential rule in the States as soon

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33. Ibid.

34. Ibid.

as the date for Assembly polls is announced. He opined that it would help all candidates to have equal chance.[55] Those opposing this suggestion cite the election results of the Fourth General Elections (1967) and claim that though the Congress was the ruling party both at the Centre and the States, it did not fare well. Similarly, the results of 1977 and 1980 elections reveal how the Congress or Janata Party, despite being the ruling party in the Centre and the States failed to secure even a single seat in some of the States. Thus the imposition of the Presidential rule in a State or otherwise does not affect the chances of the ruling party.

But the stand taken by these critics only establishes that they deliberately overlook the facts that these two elections were held in times of mass popular upsurge which naturally tilted the balance this way or that. Their standpoint, therefore, is untenable because it does not stand the scrutiny of elections held in normal times and in normal circumstances.

Perspective

From the perspective provided to us as a result of our examination of the various instances of the use of Article 356, various causes that are responsible for the use of Article 356 can be categorised as follows:-

1. Lack of Popular Support -

A situation in which the Government leadership at the

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55. S.L. Shakdher (Chief Election Commissioner), Times of India (Delhi), 16 November, 1979.

state level does not enjoy any longer the mandate from the people. This may be said to have arisen out of lack of popular support. This situation can be indicated variously. An indication may be provided at the time of Parliamentary elections when the candidates of the ruling party are defeated conclusively.

A determined mass upsurge against the ruling leadership and the almost complete breakdown of the law and order situation wherein the public refuses deliberately to co-operate with the Government can be another indicator.

2. Lack of legislative support -

This situation arises when the ruling party or group loses because of defections, expression of no-confidence in Council of Ministers, withdrawal of support by the coalition-partner, the majority support of it is and is reduced to a minority in the State Vidhan Sabha.

3. Lack of majority Group Support -

This is a situation in which to begin with the leadership enjoys both the legislative and popular support, but later on due to so many different reasons including factionalism in the ruling party or otherwise the group in power ceases to enjoy the support of majority of its members.

4. Lack of support from the central High Command of the Party -

This is a situation in which the ruling group begins

its term with the both legislative and popular support as also that of its own party members, but somehow it loses the confidence of its party High Command.

5. Lack of the Support of the Central Government -

The ruling group in the State may belong to a political party which enjoys all kinds of aforementioned support (popular and legislative) including that of its High Command. However, there may arise a different political party to govern at the Centre. In that eventuality the Central Government may, for various reasons - administrative, financial or purely political - refuse to recognise it or may believe it to be hostile to its own interests or may think it politically necessary or expedient to remove it. This situation betrays a lack of support of the Central Government.

6. Situation arising out of Political and/or Administrative Vacuum -

There may also arise a situation in which a serious political vacuum may occur to fill which it may become incumbent upon the Central Government to intervene. An instance of such a vacuum may be provided by a chance occurrence when no political party or group agrees to or is at all in a position to run the Government. The Central Government in such a situation has no other option but to impose President's rule. Sometimes the political situation may get so radically altered that a shift of power is considered necessary and inevitable. This happens when

political equations change. This had happened at the time of reorganization of States.

In such cases political expediency itself requires that the shift of power be somewhat slow and smooth, and President's rule acts as a stop-gap arrangement for the smooth shift of power from one person to another person or from one group to another or from one political party to another.

We start with the assumption that President's rule under Article 356 is a stop-gap arrangement in our political system. It is an arrangement that provides for a smooth shift of power from one individual to another, from one group to another in the same political party and from one political party to another political party. In terms of political reality, Article 356 is a political instrument that brings about and ensures a smooth shift of power. It is a purely transitional stage and its purpose is to bear the brunt of the shift that is to take place. It brings about a smooth, legal, constitutional and peaceful change of Government. It is a valuable instrument. However, it is valuable only when it is operated with certain restraints. These restraints are to be decided by political norms or constitutional conventions which are necessary for the proper functioning of any constitutional or political system.

Right cases of failure of constitutional machinery

under Article 356 in Punjab have been taken up to study the causes and effects of President's rule, besides listing in brief 75 cases of failure of constitutional machinery in other twenty one States of India (till 1987). The author has made perusal of Private Papers and Oral Transcripts of various political leaders of Punjab, besides conducting in-depth interviews of a few of them. Notable among the respondents were Dharma Vira-Former Governor, Punjab; Bhim Sen Sachar - former Chief Minister; Ram Kishan - former, Chief Minister, Punjab, Jagat Narain - Former Minister Punjab; Shri Ram Sharma - Former Minister Punjab; H.V. Kamath - Former Member, Constituent Assembly of India. The author has made use of Private Papers especially that of Bhim Sen Sachar.

The Punjab, the land of five rivers and milk and honey has become now the land of headache and perpetual crisis. The Punjab, the granary and sword-arm of India, having the highest per-capita income, had been in news for one reason or another. Beginning with the struggle for formation of the Punjabi Suba in the fifties, the struggle continues on a larger scale in the form of demand for 'Khalistan, death dance, and indiscriminate gunning down of innocent persons including assassinations of Lata Jagat Narain, Sant Harchand Singh Longowal, DIG Atwal, Dr. Rajinder Kaur, daughter of Master Tara Singh, etc.

The Punjab had been a problem State of India since independence. In 1947, it was partitioned along with

partition of India. Even while partition wounds were getting healed, it was rocked by several agitations both against and in favour of the formation of a Punjabi-speaking State. Again in 1966 the truncated Punjab was again trifurcated into the State of the Punjab, Haryana, and Himachal Pradesh. Despite the formation of a unilingual State in November 1966, peace has eluded it because of the Akali demand for the inclusion of the Union Territory of Chandigarh and the adjoining Punjabi-speaking areas of Haryana and Rajasthan into the Punjab. Since 1947, the State has been called by various names, such as the Indian Punjab, East Punjab and Punjab (India) and even Punjabi Suba, but is now referred to simply as the Punjab.

Punjab is situated in the north-western corner of the Indian Union. It is surrounded by Jammu and Kashmir in the North, Himachal Pradesh in the East, Haryana and Rajasthan in the South and Pakistan in the West. In 1981 the population of the State was 16[illegible] lakhs.[36] The Punjab is principally an agricultural state as about 50 per cent of the State income is contributed by this sector alone. As per 1981 census literacy rate in the State was 40.56 per cent.

Several socio-religious groups have played important roles in the Punjab politics. The major social divisions in thePunjab today are on the basis of religion. There are two major religious communities in the State - the Sikhs

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36. Census of India 1981.

and the Hindus. As per 1961 census,[37] the Sikhs constituted 60.75 per cent of the state population, the Hindus constituted 38.99 per cent, the Christians constituting 1.10 per cent, the Muslims 1.06 per cent and the other religious groups constituting 0.22 per cent of the total population of the State. Though both the major communities, the Sikhs and the Hindus, are spread over both the rural and urban areas, by and large, the rural areas consist predominantly of the Sikhs and the urban areas predominantly of the Hindus. Though the cleavage between the Hindus and the Sikhs has become sharper in focus during the present century, many Hindus and Sikhs even now consider the differences to be marginal both in terms of religion and language. The division between the Hindus and the Sikhs based on language is more symbolic than real as both the communities can communicate effectively in Punjabi though many Hindus prefer Hindi for literary purposes.

The other division of political significance in the Punjab is between the rural and the urban classes. This was reflected especially in the pre-partition Punjab in which the Unionist Party, basically rural, dominated the politics of the province. Beginning with the partition till 1956, the Punjab politics was dominated by the urban class. However, the rural block within the Congress Party was able

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37. Ibid.

to overthrow an urban Chief Minister- Bhim Sen Sachar in 1956. He was replaced by Partap Singgh Kairon, a ruralite. This dominance continued till 1964 when an urbanite, Ram Kishan, became the Chief Minister of the State. In an interview with the author, Ram Kishan alleged that he was over-thrown because of the dominance of the rural block within the Congress led by Darbara Singh, A-gain, after the Fourth General Election held in 1967, the rural block of Akali Dal[38] dominated the scene. The word Akali is derived from 'Akal' a compound term consisting of 'Kal' and the derivative 'a', Akali, therefore, means 'deathless' or 'immortal.' It is one of the names of the 'Divinity' and has probably been given to a special band of devotees. The Akali Dal is the regional party localized in the State of the Sikhs. Earlier, it was mainly a religious organization with a lesser degree of the political element in it. The rural block has been dominating the Punjab politics till today, represented either by the Akali Dal or by the Congress Party, Chief Ministers like Gurnam Singh, Lachhman Singh Gill, Parkash Singh Badal, Giani Zail Singh and Darbara Singh, Surjit Singh Barnala, etc. are all basically ruralites.

The Punjab is the only State where religion and politics are intermingled. Still the ideology of secularism and nationalism plays an important role in the State. In fact, factional politics and personal political opportunism

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38. For details see author's book 'Turmoil in Punjab Politics' (in print) (Mittal Publication, Delhi, 1989).

have often accentuated the communal and ideological differences, thus leading to instability and frequent imposition of President's rule in the State. The State experienced imposition of President's rule at least ~~six~~ times till today. First, it was in the post-partition era when President's rule was imposed on 20 June 1951 which lasted for a period of 302 days. It was imposed for the second time on 5 July 1966 and revoked after a period of 119 days on the reorganization of the State. For the third time, it was imposed on 23 August 1968 and revoked after a period of 178 days. It was imposed for the fourth time on 19 June 1971 and revoked after a period of 270 days. For the fifth time, it was imposed on 30 April 1977 and revoked after a period of 51 days. For the sixth time, it was imposed on 17 February 1980 and revoked after a period of 111 days. For the seventh time it was imposed on 6 October 1983 and revoked on 29 September 1985 after a period of 719 days. For the eighth time it was imposed on 11 May 1987 and President's rule is still continuing. What is striking is not only the frequent imposition of President's rule in the State but also its duration each time.

FIRST CASE : 20 JUNE 1951 TO 17 APRIL 1952.

After Independence the Congress had steam-roller majority of 70 members in a 77-member State Assembly. The Congress was a faction-ridden party. In fact, the pastime

of dissidence and infighting among the Congressmen was inherited as a legacy. After partition there were two main factions, viz., the Bhim Sen Sachar faction and the Gopi Chand Bhargava faction, which had descended from the Lajpat Rai faction and the Satyapal faction respectively. The Congress High Command itself was also faction ridden - the two main factions of the High Command were led by Jawaharlal Nehru and Sardar Patel respectively - and interestingly, this had its own repercussions in the Punjab politics. Bhargava was openly branded as Patel's protege, while Sachar was labelled as Nehru's favourite. The intra-party feud resulted in a disgusting see-saw game of frequent changes in the office of the Chief Minister in the State. Within a short span of less than four years there were three changes in four years, there were three changes in the office of Chief Minister, Gopi Chand Bhargava, the first Chief Minister after partition, was replaced by Bhim Sen Sachar in April, 1949, and Sachar was in turn replaced by Bhargava in October 1949. The movement for replacement of Sachar in October was initiated by Bhargava allegedly at the behest of his mentor, Sardar Patel. Not only was a memorandum presented against Sachar, but he was also ordered to reply to more than forty charges within a short span of 48 hours. Sachar requested for extensionof time, which was brusquely refused. The absence of Sachar's mentor, Nehru (who had gone abroad) was fully exploited by Patel, and he was forced to resign in October, 1949.

Sachar did not take things lying down. He was on the look-out for an opportunity to settle scores with Bhargava.

Partap Singh Kairon, another Congressman, an erstwhile Akali, (who was denied a berth in Bhargava's Cabinet) also itched for settling scores with Bhargava. The Sachar-Kairon combine made every effort to sabotage the Bhargava Ministry. However, Patel died in December 1950 and with his dominant personality removed, the Congress High Command now under the undisputed sway of Pandit Nehru decided to get rid of Patel's protege Dr. Gopi Chand Bhargava, Bhargava's removal was engineered by first imposing President's rule on 20 June 1951 and then installing Bhim Sen Sachar, Nehru's protege in Bhargava's place after President's rule was revoked on 17 April, 1952.

SECOND CASE : 5 JULY 1966 TO 1 NOVEMBER 1966.

Hindus and Sikhs constituted the two major religious communities of the Punjab at this time. In 1951, the Hindus constituted about 62.3 per cent of the total population of the State; the Sikhs were 35 per cent and other religious groups 2.7 per cent. After a decade, in 1961, the Hindus constituted 63.7 per cent while the Sikhs constituted 33.3 per cent while the Sikhs constituted 33.3 per cent. Keeping in view this tentative demarcation of population, the Akali Dal clamoured for the creation of a State (the Punjabi Suba) which would be under the political control of the Sikhs only, though the demand itself was made in the name of Punjabi-speaking people. Ultimately, the Centre conceded the demand for a Punjabi Suba, by bifurcating the composite Punjab into Punjabi Suba (the Punjab) and Haryana, and by merging its hill areas with Himachal Pradesh. The Centre agreed to the formation of a Punjabi-speaking State, solely with a view to appeasing the

the Akalis who had launched repeated morchas for wresting a Punjabi Suba; the Akalis felt that they had a natural right to rule over the State. This reorganisation of the Punjab in July 1966 resulted in reducing the Hindu population to 37.6 per cent in the new Punjab, while the Sikh population increased to 60.2 per cent. This change was responsible for converting a Hindu dominated erstwhile Punjab into a Sikh dominated State; and among the Sikhs, the pendulum swung towards the rural Jat Sikhs. The impositionof President's rule on 5 July 1966. The President's rule for about four months was a transitional period to make the inevitable shift of power from the Hindu domination to the Sikh majority.

THIRD CASE : 25 AUGUST 1968 TO FEBRUARY 1969.

Now we come to the new truncated, reorganised Punjab which, the unique distinction of accommodating and making strange bed-fellows of sharply contrasted political ideologies in various governments from time to time. After the Fourth General Election held in 1967, a Peoples United Front - a cocktail of various ideologies - was forged on 8 March 1967. It comprised the Akali Dal (Sant), the Jana Sangh, the CPI and the CPI (M), the Akali Dal (Master Tara Singh group), the Republicans and the Independents. The Akali Dal and the Jana Sangh both bowing down to wear a common crown was perhaps the biggest surprise. It was trenchantly alleged that the Akali Dal-Jana Sangh combine was as harmonious as a mixture of brimstone and fire. The Congress had to sit in opposition, but it could not wait for a long time. It indulged in unsavoury

and sordid manipulations and manoeuvrings to bring down the Front Ministry. Ultimately, it succeeded in creating a cleavage among the top echelons of the Akali Dal, which consequently led to an open revolt against the party leadership. The Congress egged on Lachhman Singh Gill to stage the revolt with a promise of Chief Ministership. On 22 November, 1967, Lachhman Singh Gill (the then Education Minister in the Gurnam Singh Ministry) revolted and defected along with 16 legislators, thereby bringing down the Gurnam Ministry. Gill triumphed and then he constituted a minority government, with the overt support of the Congress High Command. The great expectations of the Congress High Command were based on their wishful thinking that rift in the Akali Dal would eventually lead to a shift of power from the Akali Dal to the Congress Party. The Congress, by installing Gill, had expected to become defacto ruler of the Punjab, but Gill proved to be a past master in the art of state-craft and belied all their calculations. Irked by such a volte face, the State Congress leaders impressed upon the Congress High Command to withdraw its support to the Gill Ministry. Their calculation was that the electorate was already fed up with the antics of the Gill Ministry and that the election wind was blowing in their favour. Consequently, the Congress Party withdrew its support on 21 August, 1968 and the Gill Ministry fell. President's rule was imposed on the State two days later, i.e. on 23 August, 1968. It was alleged that President's rule was imposed this time to provide for mid-term elections with the hope that the power would be shifted from the ruling Akali Dal to the Congress after elections. However, these hopes were belied.

FOURTH CASE : 15 JUNE 1971 TO 17 MARCH 1972

In this case, President's rule was imposed to deal with the problems of defections and political instability. During the budget session of March 1970, the process of defections had started within the ruling party (Akali Dal). The Akali Das was a faction-ridden party, the former Chief Minister Gurnam Singh (Akali), leading one of the factions. He had secretly planned to topple the Badal Ministry by manoeuvring defections of 18 Akali MLAs out of 58 in the 104-member State legislature. The Chief Minister Prakash Singh Badal, however, outwitted Gurnam Singh and foiled his toppling operation by getting the State Assembly dissolved thus precipitating President's rule. In this unique case the Governor accepted the advice of the Chief Minister without seeking the customary concurrence of the Centre. The Congresswas perhaps hoping to form an alternate government, but the Governor acted strictly as a constitutional head: and this added a new dimension to the role of a Governor. President's rule in this case was used purely for a constitutional and non-political purpose.

FIFTH CASE : 30 APRIL 1977 TO 20 JUNE 1977.

In March 1977, the Janata Party stormed into office at the Centre. 'Janata wave' in the State also got impetus due to the excesses committed by the preceding Government, during the emergency period. The Union Home Minister Charan Singh wrotea letter to the State Chief Minister on 18 April suggesting to him to advise the Governor to dissolve the

State Assembly in exercise of powers under Article 174(2) (b) and seek a fresh mandate from the electorate. The Chief Minister, however, refused to oblige. On 30 April, 1977 President's rule was imposed in the State (even without the customary Governor's report) and the State Assembly dissolved. In the subsequent election of June 1977, the Akali Janata alliance achieved a resounding victory, and Prakash Singh Badal (Akali Dal) assumed office as Chief Minister. President's rule was revoked on 20 June 1977. In this case, President's rule was used as a device to get rid of a Ministry that was supposed to have lost people's mandate as reflected in elections to the Lok Sabha.

SIXTH CASE : 17 FEBRUARY 1980 TO 7 JUNE 1980.

In January 1980, history repeated itself in reverse when the Congress Party stormed in at the Centre. The Party wanted to cash in on its popularity and again President's rule was imposed in the State on 17 February, and in the subsequent trend of election the Congress (I) won. Its leader Darbara Singh who was then the PCC(I) President, became the Chief Minister on 7 June 1980.

SEVENTH CASE : 6 OCTOBER 1983 TO 29 SEPTEMBER 1985.

Darbara Singh's election as Chief Minister on 7 June 1980 surprised many as after being in political wilderness, for almost 14 years, he was able to snatch the throne of Punjab.

His rivals inthe party did not give more than a few days and his supporters kept their fingers crossed. The Congress (I) continued to be a faction ridden party. Inspite of wearing a veneer of unity and solidarity the two main factions were led by Gaini Zail Singh, Union Home Minister and Darbara Singh with certain other sub-sections working as satellites. Darbara Singh due to his inept and undiplomatic handling of various issues created more enemies than friends.

Even the Akali Dal was a divided house. There were three factions led by Sant Harchand Singh Longowal, Jagdev Singh Talwandi and Dr. Jagjit Singh Chauhan (who was propagating and spearheading the movement for formation of Khalistan from Great Britain) with certain other floating islands of sub-sections working as pressure groups either to resolve the differences or to sharpen them as it suited their whims or interests at any given time. In September 1981 the Akali Dal forwarded a list of 45 demands which included 14 religious demands (i.e. to name any express train as Golden Temple express, to award holy City status to Amritsar, enactment of All India Gurudwaras Act, removal of restricts on carrying of kirpans (swords) by Sikhs in the National airlines, etc.) 8 political demands(i.e. keeping out Chandigarh and other Punjabi speaking areas out of Punjab and taking away control of water head works and river water distribution, denial of internal autonomy to the State, denial of second language status to Punjab in neighbouring

States, etc.) 21 economic demands (i.e. reduction in the recruitment quota of Sikhs in armed forces from 20 per cent to 2 per cent, grant of minimum central aid to Punjab, concentration of economic power in the hands of 5 per cent people, economic exploitation in Punjab, eviction of Punjabi farmers from Uttar Pradesh, non-remunerative prices for agricultural produce, non-payment of unemployment allowance, etc.) and 2 social demands (i.e. non-recognition of the Sikh Personal Law, and projecting in improper way in films and T.V. etc. encouraging anti-Sikh literature and not giving sufficient time for coverage of Sikh literature on Radio/T.V. etc.)[39] In October 1981 a revised list of 15 demands were submitted by the Akali Dal. These demands included 8 religious demands (i.e. unconditional release of Sant Jarnail Singh Bhindranwale~~release of~~ removal of alleged Government high-handedness in the management of Delhi Gurudwaras, permission to Sikhs travelling by air to wear Kirpans in domestic and international flights, grant of Holy city status to Amritsar, installation of "Harimandir Radio" at Golden Temple, Amritsar to relay Kirtan, and remaining Flying Mail as Harimander Express. The 7 political, economic and cultural demands include (the Centre should retain Foreign Affairs, Defence, Currency and Communication

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39. ibid.

(including means of transport) while the remaining portfolios should be with the States. Besides, the Sikhs should enjoy special rights as a nation; merger of Punjabi-speaking areas and Chandigarh into Punjab; handing over of dams and headworks in the State to Punjab and redistribution of river water as per national and international rules; second language status to Punjabi language in Haryana, Delhi, Himachal Pradesh and Rajasthan; setting up a dry port at Amritsar; remunerative price should be fixed for agricultural products by linking it to the index of industrial production etc.)[40] Though the Akali Dal listed a number of demands, the crux of their crusade lied in getting the Centre to accept the Anandpur Sahib Resolution of 1973.[41] The Postulate No.1 stated "The Shiromani Akali Dal is very embodiment of the hopes and aspirations of the Sikh Nation and as such is fully entitled to its representtion" The word 'Sikh Natinn' generated lot of heat as critics pointed out that it leads to session. However, the Akalis' were asked to refer their Anandpur Sahib Resolution to Sarkaria Commission (which was appointed to review Centre-State relations on 9 June, 1983 under the Chairmanship of R.S. Sarkaria, a retired judge of the Supreme Court).

The Akali demands fell to three broad categories,

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40. ibid.

41. ibid.

viz. Firstly, those which concern the Sikh community as a religious group, secondly those which relate to the State of Punjab viz-a-vizother states and thirdly, those which related to general issues. The religious demands put forward by Akali Dal were (a) Declaration of 'Holy City' status to Amritsar (b) Installation of Transmitter station at the Golden Temple (c) Carrying Kirpans on flights (d) All India Gurudwara Act (e) Renming the Flying Mail as Golden Temple Express,etc.

Secondly, the disputes which relate to other States, included (a) River water i.e. sharing of Sutlej-Beas water for Punjab (b) Territorial issues - i.e. handing over of Chandigarh exclusively to Punjab.

Thirdly, on Centre-State relations the Anandpur Sahib Resolution read as follows:-

" In this new Punjab and in other States the Centre's interference would be restricted to Defence, Foreign relations, Currency and General Communications; all other departments would be in the jurisdition of Punjab (and other States) which would be fully entitled to frame own laws on these subjects for administration." The other demands included (a) Grant of Second language status to Punjab (b) To stop uprooting of Punjabi farmers in the Terai region of Uttar Pradesh (c) To change the recruitment policy of armed forces.

A complicating factor had come into being in Punjab when the leadership of the Sikhs in Punjab had started passing from educated and moderate Sikh leaders like Prakash Singh

Badal to religious zealots like Sant Jarnail Singh, Bhindranwale. The crowning irony of the situation was that it was the Congress (I) which propped up Sant Bhindrawale, in the first place in order to take wind out of the Akali sails, just as late Pratap Singh Kairon had build up Sant Fateh Singh as a counterpoise to Master Tara Singh. As in the past, so now, the supposedly shrewd tactic had boomeranged. During this period, under aegis of Bhindranwale a cult of terrorism emerged. On 6 October 1983, the extremists in Punjab had perpetrated a most vicious communal carnage in Dilwan where a bus was hijacked at night, its passengers segregated among communal lines, the eight Hindus among them gunned down in cold blood and rest left to fend for themselves. The perpetrators wanted not only to strike terror among the long suffering people of Punjab but also to provoke communal riots between Hindus and Sikhs. It was on the morrow of the Dilwan outrage, that President's rule was imposed in Punjab on 6 October 1983. President's rule was revoked on 29 September 1985. In this case President's rulewas used as a device to get rid of Barbara Singh who was crossing swords with Zail Singh, Union Home Minister.

EIGHTH CASE : 11 MAY 1987 (STILL CONTINUING).

In September 1985 elections in Punjab were held in an extremely abormal background. The last four years of turmoil, i.e. Operation Blue-Star (entry of army forces into the Golden Temple to flush out terrorists), anti-Sikh riots

outside Punjab on the eve of Indira Gandhi's, former Prime Minister of India, assassination, massive deployment of the armed forces in State had greatly embittered Sikhs and had alienated them from the main stream. There has thus emerged a partial polarisation on communal lines. Total votes polled in September elections were 66.5 per cent of the total voters. The Akali Dal was polled 38.54 per cent of total valid votes and won 73 seats in 117-member State Assembly. The Congress (I) secured 37.8 per cent votes polled securing 32 seats. The CPI secured 4.5 per cent of votes with 1 seat, CPI(M) secured 1.8 per cent with no seat. The BJP got 3.84 per cent votes with 4 seats. Later on, it also won two seats where elections were countermanded earlier thereby raising its strength to 6 in the Assembly. In fact, it was for the first time that Akali Dal was able to secure a clear majority in the State Assembly. Surjit Singh Barnala became the Chief Minister on 29 September 1985. The Akali Dal was a divided house. Various factions included Parkash Singgh Badal faction, Amarinder Singh and Ravi Inder Singh faction, besides G.S.Tonra and Talwandi faction.

On 29 April 1986, the Panthic Committee, an extremist organisation, ~~declared~~ declared its goal for formation of Khalistan and unfurled flag of Khalistan in the precincts of Golden Temple. The Chief Minister Barnala could not be a mute spectator and after great hesitancy ordered the entry of Police to perform mini surgical operation

called, 'Operation Woodrose' or 'operation search' to flush out terrorists from the precincts of Golden Temple. The Police entry into the Golden Temple evoked reaction even among Akali Dal itself. The decision was not palatable even to some of Barnala's colleagues in the Cabinet. His colleagues in the Cabinet and in the State Legislative Assembly raised their banner of revolt in a concert to derive maximum political advantage from this emotional issue and tried to rock Barnala's boat. Barnala was ex-communicated from Sikh Panth by High Priest of Golden Temple.

On 11 May 1987 on the promptings of the Centre the Governor S.S. Ray sent a report to President stating that Akali Dal (L) Ministry under the stewardship of Surjit Singh Barnala was unable to combat the foundamentalist movement and the terrorist and extremist forces within the State. As a result murders, lootings and other acts of lawlessness had sharply increased leading to total chaos and anarchy, particularly in the rural areas. The Ministry found itself helpless in the matter of restoring even a semblance of order anywhere. Accordingly to the Governor's report the situation was further aggravted by the fact that some of the Ministers were deeply involved with terrorists and extremists. In fact, it was at the alter of political expediency i.e. to take a tough action in Punjab to woo the votes of Haryana who were to go for State Assembly polls in June 1987. In The President's rule is still continuing.

To sum up, we may say that the Centre has no independent existence. It exists for the States and because of the States. It is an abstract entity and if it possesses any personality, it is because of its component-States. Even if authority may seem to flow from the Centre to the States, such authority has accrued to it only from the States. If an analogy of geometry is taken, there is no centre if the circumstances describing the circle is erased. Constitutionally, no doubt, the Centre is already blessed with more than its share of powers, still it is greedy to obtain more powers by making inroads into the sphere of State activity. It has, at times, been playing the role of a jealous and niggardly mother-in-law who is suspicious of her daughters-in-law being outsiders ready to snatch away the household keys.

Accordingly to K. Subha Rao, former Chief Justice of India, the Centre is predominant over the States because of various agencies like the Planning Commission coupled with social, economic, political and educational conditions of the country. Besides various judicial pronouncements, the Constitution itself leans heavily towards the Centre. Article 356 of the Constitution is one of the provisions devised by the framers as the long arm of the Centre.

It is one thing to possess legal powers and quite another to have the capacity to use them with propriety in a meticulous manner. To the critics, Article 356 appears to be "unfederal, undemocratic, impolitic, unwise and absolutely

impracticable to be used with success.

On the other hand, protagonists of the dynamics of Article 356 claim it to be a panacea. R.P. Noronha, former adviser during the President's rule, claims that:

"It (the President's rule under Article 356) is a delightfully simple form of the government. Everything is decided on its merits, and the pulls and pressures of a political government, which provide so much material for memoirs are disappointingly absent. The chap in charge of a department at the district level makes a reference, the Secretary comments, the Adviser advises and the Governor passes orders if the matter is important enough; if not, the Adviser's advice is the order. If the case is so important that it would have gone to the Cabinet under an elected government, it is decided jointly by the Governor and his Adviser, but the process takes three minutes instead of three hours because the troublesome Cabinet Minister, the one who fears a reaction from his own particular group of MLAs, is not there. Or, starting from the other end, some one in the Secretariat has a brain-wave, the Chief Secretary thinks it is a good idea and refers it to the Senior Secretaries Committee, they approve of it after tinkering with it a little - and lo and behold, it becomes a vital decision of the administration within days, instead of years."[44]

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44. R.P. Noronha (was Adviser to the Governor of Madhya Pradesh and Punjab when the States were under the spell of the President's rule).

R.P. Noronha himself comes out with its major shortcomings by saying that "President's rule is a peculiarly negative kind of government. It has no mandate from the people and represents no one. It exists for a limited and brief space of time. It must be careful not to commit the next elected government to a course of action that may be distasteful. It must be equally careful not to sit in judgment on the previous government which was at least elected and, therefore, intrinsically superior. It must govern without indulging in the basic function of the government, the formulation of a policy."[45]

In fact, human nature being what it is, it is well-nigh impossible to expect the Cabinet ministers at the Centre to rise above party considerations andreach a dispassionate evaluation of the situation and act accordingly. The President is to be guided by the aid and advice of the Council of Ministers at the Centre. The Central Government, like all other governments, being a party government could not be expected to be altruistic for success in the political arena which brooks no philanthropy.

The President's rule should, perhaps, be used as a last resort. Its frequent use or misuse made one of the Framers of the Constitution remarks: "If Ambedkar would have

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45. R.P. Naronha, "President's rule, "Illustrated Weekly of India, 18 September 1977, p. 22.

been alive today, he would have seen himself that it is not mending or amending the Constitution but ending the Constitution.[46]

As regards Punjab, the opinion expressed by Jawahar Lal Nehru in a letter to Bhim Sen Sachar as far as as in 1955 seems to be true even today (1989). The letter[47] said "The situation in Punjab is such that while it is relatively calm at present, it is full of potential difficulty and conflict. We shall have to watch it carefully."

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46. Interview with H.V. Kamath.

47. Jawahar Lal Nehru to Bhim Sen Sachar, letter No.1327-PMI/55, dated 5 August 1955, see Private Papers, Bhim Sen Sachar, Teen Murti House, New Delhi and author's forthcoming book. Ibid. n. 38.

POLITICAL MODERNIZATION

The interest of the Western Capitalist nations in the poor nations in Post-World War Second era has been focused not only on profits, extraction of raw material, new markets but on the assumption that massive financial and technical assistance from the west would transform these agricultural subsistence societies ~~of~~ into modern industrial societies.[1] They, therefore, pleaded that the newly emerging nations should adopt the European values alongwith assistance for their political development and modernisation.[2] They believe that the experience of the Western Europe of development and modernisation would modernize the less developed nations of the Third World also. Another view is that the need for the study of modernisation and its related problems has arisen simply because many of the emerging nations not only won political freedom but have developed a craze for economic development. In other words the urge for socio-political reforms and economic growth was the part of their movement for political freedom.[3] The aspiration for national dignity and development as well as independence, therefore, found a practical basis for the academic concern with political development and political modernization.[4]

The political scientists ~~have~~ who have worked in this field, however, failed to develop a universally accepted theory about political Modernisation.[5]

9.1. Modernisation and Political Modernisation - Concepts:

The concept 'Political Modernisation,' like Politic[illegible] Development is very vague. Different scholars have defin[illegible] it different. Most of the western Political scientists regarded modernization as westernisation.[6]